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ORDINANCE No. 2003-40

(Revision of Chapter 12, Trees and Vegetation, of Takoma Park Code)

WHEREAS, the City of Takoma Park has the authority to make and administer laws and regulations to protect the public's health and safety, and to protect the environment; and

WHEREAS, the City has the authority under Section 5-427 of the Natural Resources Article of the *Annotated Code of Maryland* to implement a local urban and community forestry program; and

WHEREAS, trees and other plants provide significant public benefits in terms of air, noise and visual pollution control, control water run-off and support the biologic and hydrologic integrity of watersheds and ecosystems, and have significant aesthetic value affecting property values and the quality of life in the City; and

WHEREAS, the protection and proper care of the trees and vegetation within the City of Takoma Park enhances the level of public benefits they produce, and

WHEREAS, the Council is in the process of reviewing the provisions of the Takoma Park Code as part of the City ongoing recodification project; and

WHEREAS, the Council, as part of this recodification project, has determined that certain provisions of Chapter 12, Trees and Vegetation, of the Takoma Park Code need to be revised and, accordingly, adopts this ordinance amending Chapter 12 of the Takoma Park Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, that the provisions of Takoma Park Code, Chapter 12, Trees and Vegetation, are repealed in their entirety and replaced by the following, which shall stand in place of the Chapter being repealed:

TAKOMA PARK CODE

CHAPTER 12. TREES AND VEGETATION

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- § 12-302. Tree impact assessment.
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- § 12-305. Permit waivers.
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- § 12-307. Permit approval.
- § 12-308. Application and permit validity time period.
- § 12-309. Tree replacement required.
- § 12-310. Appeals from permit decisions.
- § 12-311. Criteria for tree permit decisions.

- § 12-312. Violations and penalties; enforcement.
§ 12-313. Duties of City Arborist.

ARTICLE 1. GENERAL PROVISIONS

Sec. 12-100. Definitions.

As used in this Chapter:

- (a) *Basal Area* shall mean the area of a tree trunk's cross section, measured outside the bark.
- (b) *Caliper* shall mean the diameter measurement of the trunk of nursery stock trees, taken at caliper height.
- (c) *Caliper Height* shall mean six (6) inches above the ground in the case of trees less than four (4) inches in diameter at six (6) inches above the ground and twelve (12) inches above the ground in the case of all other trees.
- (d) *Canopy* shall mean the combined crowns of all trees on a tract of land.
- (e) *City Manager* shall mean the City Manager of the City of Takoma Park or his or her designee.
- (f) *City Property* shall mean City rights-of-way, City parks, median strips, and other City-owned or controlled property.
- (g) *Critical Root Zone* shall mean the protection zone for an individual tree or an area defined by a circle with a diameter 36 times the DBH of the tree (or 1.5 feet of radius for each inch of DBH) or such smaller area as determined by the City Manager in a tree impact assessment.
- (h) *Crown* shall mean the volume defined by the spread of the branches and foliage of a tree.
- (i) *Department* shall mean the Department of Public Works of the City of Takoma Park.
- (j) *Diameter at Breast Height* or *DBH* of a tree shall mean the measurement of the average diameter of the tree taken at 4 ½ feet above the ground.
- (k) *Hazardous*, in relation to a tree or tree part, shall mean defective, diseased or dead, and posing an unreasonable risk of failure or fracture with the potential to cause injury to people or damage to property.
- (l) *Nursery Stock Tree* shall mean a tree which meets the standards established by the American Standard for Nursery Stock published by the American Association of Nurserymen (Publication No. ANSI Z60.1 -1996).

(m) *Open Space* shall mean undeveloped City owned property that is not parkland or right-of-way.

(n) *Owner* shall mean any person who, alone or jointly or severally with others:

(1) Has a legal or equitable ownership interest in a real property, including a contract purchaser of property;

(2) Has a legal, equitable or beneficial interest in a corporation, limited liability company, partnership, limited partnership, limited liability partnership, trust or other entity that has a legal or equitable ownership interest in a rental facility; or

(3) Has charge, care or control of real property as personal representative, executor, administrator, trustee, guardian, or conservator of the estate of the owner.

(o) *Person* shall mean an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, trust, association, organization, or any other legal entity, but does not include the City.

(p) *Tree Commission* shall mean the citizen commission established by the Council to preserve, protect, and promote the urban forest of the City and to hear appeals from permit decisions.

(q) *Tree Cover* shall mean area covered by canopy, expressed in square feet or as a percentage of the area of a tract of land.

(r) *Tree Protection Plan* shall mean a site plan that delineates tree save areas and details measures to be taken to ensure survivability of trees to be saved prior to and during construction.

(s) *Urban Forest Tree* shall mean a tree as defined in Section 12-301.

(t) *Vermin* shall mean small animals, including insects, that are prolific and destructive or injurious to health.

(u) *Woody Vegetation* shall mean vegetation with stems of wood (other than vines) and includes trees and bushes.

Sec. 12-101. Interpretation.

This Chapter is intended to supplement and not to contradict or supersede any applicable provisions of the law and regulations of the State of Maryland, and is to be interpreted as such.

Sec. 12-102. Authority of City Manager to adopt regulations.

The City Manager may adopt regulations to implement this Chapter, in accordance with the provisions of Chapter 2, Article 5, Administrative Regulations.

Sec. 12-103. Interference prohibited.

A person who prevents, delays, or interferes with the City Manager while he or she is carrying out the provisions of this Chapter in or upon any City property, public highway or public space commits a Class C municipal infraction.

Sec. 12-104. Enforcement; stop work orders.

(a) The Department has primary responsibility for the administration and enforcement of this Chapter.

(b) Representatives of the Department, the City Arborist, and Code Enforcement Officers may serve as the City Manager's designee, with full authority to enforce all municipal infraction provisions of this Chapter.

(c) In addition to all other means of enforcement provided for by law and in this Chapter, the City Manager, Code Enforcement officers, or police officers may issue a "stop work order" to any person who violates any provision of this Chapter. A stop work order also may be issued on the basis of information received setting forth the facts of the alleged violation.

(1) Any person who receives such a stop work order shall immediately cease the activity that constitutes the violation. The person shall comply with all terms and conditions imposed by the person issuing the order before the activity may resume.

(2) A person who receives a stop work order may appeal the issuance of the stop work order to the Tree Commission pursuant to Section 12-310 within 15 days after the issuance of the stop work order, as if the issuance were a denial of a tree permit.

Sec. 12-105. Procedure to be followed in case of infractions.

(a) In the case of violations of this Chapter, the City may issue a warning notice, giving the person an appropriate period of time to correct the violation before a municipal infraction citation is issued. No additional warning notices shall be issued for continuing or subsequent violations for which a warning notice was issued.

(b) Failure to abate a violation for which a municipal infraction citation has been issued by the due date of the fine, as set forth on the municipal infraction citation, causes continuing or subsequent violations to be treated as repeat offenses.

(c) In addition to the fine for a municipal infraction, the City may obtain a court order for the owner to abate the violation or for the City to abate the violation at the expense of the owner.

Sec. 12-106. Charges for City taking corrective action.

(a) Where the City has taken corrective action to bring a property into compliance with this Chapter, the City Manager shall send the owner a bill for the cost of the corrective action. The bill shall be sent by regular mail to the owner's last known address or delivered by any other means reasonably calculated to bring the bill to such person's attention. If the owner does not pay the bill within one month after it is presented, the City Manager may certify the cost of such corrective action to the City Treasurer.

(b) The City Treasurer shall send a bill for the costs of such corrective action to the owner of the real property, as listed in the City property tax records. The City Treasurer also may send a copy of the bill for the costs of the corrective action to a lender under a mortgage or deed of trust made by the owner and secured by the real property, as listed in the City property tax records. The bill shall be sent by regular mail to the last-known address of the owner or lender or delivered by any other means reasonably calculated to bring the bill to such person's attention. If the bill is not paid within one month after it is presented, then the cost becomes a lien against the real property which may be collected and enforced in the same manner as are taxes, special assessments, and other liens against real property or collected by a law suit against the owner.

Sec. 12-107. City Manager to have decision-making authority for all trees on City property.

(a) The City Manager has authority over the disposition of all trees located on City property and has the power to plant, maintain, or remove trees on City property. The City Manager shall give due consideration to the urban forest preservation principles embodied in this Chapter when making decisions regarding trees on City property.

(b) The City Manager may order the removal of any tree or part of a tree on City property that:

- (1) Poses a threat to safety;
- (2) May cause damage to sewers or other public improvements;
- (3) Is diseased or infested and poses a danger to other healthy trees, if removal is the only practical solution;
- (4) Seriously impairs the appearance of City property; or
- (5) Interferes with the exercise of any power conveyed by the Charter of the City of Takoma Park, including the construction and alteration of buildings and public ways and sidewalks.

(c) If the City Manager orders the removal of a tree pursuant to subsection (b), the City must replace the tree in accordance with Section 12-309.

(d) The City Manager shall manage forest located on open spaces to preserve the natural state except where there is a threat to the public health, safety, or welfare.

Sec. 12-108. Inspection for insects and disease; taking of specimens.

(a) The City Manager is authorized to inspect any woody vegetation that appears to be or is reported to be infected with a fungus, virus, bacterium, or other pathogen or infested with insects or other parasites which, due to such infection or infestation, may cause damage to other woody vegetation or other property, and may take specimens from the woody vegetation if necessary to determine the existence of such infection or infestation.

(b) If the City Manager cannot determine with certainty the existence of infection or infestation in any woody vegetation, the City Manager shall send any such specimens for examination, diagnosis and report to the Cooperative Extension Service, Home and Garden Information Center, University of Maryland or other laboratory, and shall base further action on such extension service or other laboratory report.

Sec. 12-109. Permission required to prune, spray, plant or remove from City property.

(a) Except as provided in subsection (b), a person who sprays, prunes, cuts, removes, or plants any vegetation on City property, without obtaining prior written permission from the Department, commits a Class B municipal infraction.

(b) Permission is not required to plant or maintain non-woody vegetation less than 24 inches in height on planting strips or City rights-of-way located adjacent to the person's property (e.g., between the front yard or the sidewalk and the street), unless the City Manager informs the person of the City Manager's objection to the planting or maintenance.

Sec. 12-110. Requirement for supervision by a tree expert.

(a) No person shall perform tree pruning, tree removal or other tree work for hire, including consulting, insect and disease mitigation, abiotic mitigation, and tree preservation, without supervision, involving a site visit, by a Licensed Tree Expert (LTE) in good standing with the Maryland Department of Natural Resources.

(b) No person shall perform tree care consulting for hire without being a Licensed Tree Expert (LTE) in good standing with the Maryland Department of Natural Resources.

(c) All tree work and consulting will be done according to arboriculture industry guidelines: ANSI A300 (Parts 1 and 2) and ANSI Z133.1 (as amended).

(d) A violation of this Section is a Class B municipal infraction.

ARTICLE 2. PROHIBITIONS ON MAINTAINING UNDESIRABLE VEGETATION

Sec. 12-200. Infected or infested woody vegetation on private property.

A person who maintains on private property woody vegetation found to be infected with a fungus, virus, bacterium, or other pathogen or found to be infested with insects or other parasites which, due to such infection or infestation, may cause damage to other woody vegetation or may pose a threat to persons or the property of others commits a Class C municipal infraction.

Sec. 12-201. Fallen or dangerous trees on private property.

(a) No person shall permit a tree or tree part, dead or alive (including a stump displaced from the ground), to stand on private property if it is hazardous .

(b) No person shall maintain a fallen tree, brushwood, or part of a fallen tree on private property that constitutes a harborage place for vermin or disease.

(c) A violation of this Section is a Class C municipal infraction.

Sec. 12-202. Vegetation not to obscure intersection.

(a) Vegetation taller than 3 feet above a street surface, except an urban forest tree, is not permitted within 20 feet of the corner of a property located at an intersection of two streets. If the vegetation is located on top of a retaining wall, the retaining wall shall be considered part of the 3 feet.

(b) A violation of this Section is a Class D municipal infraction.

Sec. 12-203. Vegetation not to obstruct sidewalks or traffic.

A person who permits any vegetation on private property to encroach on, impede vehicular or pedestrian passage upon, or to overhang within 8 feet above any street or sidewalk, or obstruct any traffic control device commits a Class D municipal infraction.

Sec. 12-204. Noxious growths.

(a) No person shall maintain on private property poison ivy (*Rhus radicans* or *Toxicodendron radicans*), poison oak (*Rhus toxicodendron* or *Toxicodendron quercifolium*), poison sumac (*Rhus vernix* or *Toxicodendron vernix*), ragweed (*Ambrosia artemisiifolia*) or similar vegetation. Failure to make continued good faith efforts to eradicate such vegetation in accordance with Department regulations shall be a Class D municipal infraction. The City shall not maintain such vegetation in City parks but shall not be required to remove such vegetation from any City property designated as an open space.

(b) All persons must control the growth of bamboo, kudzu-vine (*Pueraria lobata*), non-native honeysuckle, wisteria, multi flora rose (*Rosa multiflora*) or other vines or vegetation that may damage

trees, native vegetation, or structures. Allowing vines to reach the limbs of trees is a violation of this subsection. Failure to make continued good faith efforts to control the growth of such vegetation in accordance with Department regulations shall be a Class D municipal infraction

(c) No person shall allow any vine or vegetation listed in paragraphs (a) and (b) of this Section or any other vine or vegetation that may cause a threat to public safety or damage to trees, structures, or native vegetation to spread to an adjoining property over the objection of the adjoining property owner. Failure to make continued good faith efforts to control such growth in accordance with Department regulations shall be a Class C municipal infraction.

Sec. 12-205. Uncontrolled growth of vegetation on vacant lots.

(a) The owner of a vacant lot that does not have at least 60% tree cover is required to keep the natural non-woody vegetation on the lot to within 10 inches of the ground.

(b) A violation of this Section is a Class D municipal infraction.

Sec. 12-206. Uncontrolled growth of lawns on private property.

A person who allows 30% or more of a lawn to reach or exceed the height of 10 inches commits a Class D municipal infraction.

Sec. 12-207. Notice to correct prohibited conditions.

(a) Whenever any condition prohibited by Sections 12-200 through 12-206 is found within the City, the City Manager shall give notice to the owner or occupant of the property or the person responsible for such condition to correct such condition within such reasonable time as may be specified in such notice.

(b) If any person fails or refuses to correct or abate any prohibited condition after receipt of notice pursuant to subsection (a) above, such condition may be corrected by the City at the expense of the person named in such notice. Correction or abatement by the City shall not prevent or excuse any prosecution of the person responsible for the condition abated by the City.

ARTICLE 3. URBAN FOREST

Sec. 12-300. Legislative findings.

The Council of the City of Takoma Park hereby finds that it is in the interest of the citizens of the City to protect, preserve, and promote the City's urban forest. The City's urban forest is part of a larger ecosystem that supports wildlife and contributes significantly to air, noise, and visual pollution control. The existence of shade providing trees moderates climatic extremes and reduces energy consumption. The City's urban forest is part of the watershed of Long Branch, Takoma Branch, and Sligo Creeks and

therefore plays an important role in controlling water run-off and supports the biologic and hydrologic integrity of these watersheds. The urban forest has significant aesthetic value, which affects property values and the quality of life of the community. Regulation of actions affecting the urban forest provides mutual benefits to City residents and property owners. The purpose of this Article is to protect healthy trees of desirable species and it shall be administered in a manner that seeks to protect such trees at every opportunity.

Sec. 12-301. Urban forest trees.

An urban forest tree is a tree in the City which:

- (a) Measures 24 inches or more in circumference at 4 ½ feet above ground level or measures 7 and 5/8 inches or more DBH; or
- (b) Is required to be planted or maintained, pursuant to governmental order, agreement, stipulation, covenant, easement, or a tree protection plan, or as a condition of issuance of a tree permit; or
- (c) Is planted with government funding or under a government program.

12-302. Tree impact assessment.

(a) Except as provided in subsection (b), a tree impact assessment shall be required prior to conducting any of the following activities:

- (1) Regrading, with any material, three inches or more above or below existing grade in excess of 25 square feet within 50 feet of an urban forest tree.
- (2) Construction or placement of a structure other than a fence within 50 feet of an urban forest tree; or
- (3) Paving in excess of 25 square feet with an impervious surface within 50 feet of an urban forest tree; or
- (4) Removing, relocating, destroying, or topping an urban forest tree or pruning more than five percent (5%) of the live canopy of an urban forest tree.

(b) A tree impact assessment shall not be required for action required on an emergency basis (with no time to obtain an assessment) to prevent harm to life or property, for actions performed at the written request of a utility company such as PEPCO, Bell Atlantic, WSSC, or Washington Gas, or for actions performed by a utility company in accordance with a memorandum of understanding between the utility and the City.

(c) The City Arborist shall conduct a tree impact assessment at the request of any person

intending to conduct an activity described in subsection (a) above. Following the tree impact assessment, the City Arborist will advise the person requesting the assessment of the permits required under this Chapter to proceed with the proposed activity.

(d) Failure to obtain a tree impact assessment before conducting any of the activities described in this subsection shall constitute a Class AA municipal infraction.

Sec. 12-303. Tree permit required.

(a) Except as provided in subsection (b), a tree permit is required for the removal, relocation, destruction, topping, pruning of limbs with significant diameter in relation to the size of the tree, or other action which would significantly and permanently detract from an urban forest tree's health or growth.

(b) No permit is required:

(1) When the City Manager grants a tree permit waiver under Section 12-305; or

(2) For action required on an emergency basis (with no time to apply for a tree permit or a tree permit waiver) to prevent harm to life or property; or

(3) Where the removal, destruction, cutting or trimming of an urban forest tree that has branches or roots which obstruct or interfere with utility pipes, lines, and wires is performed by a utility company such as PEPCO, Verizon, WSSC or Washington Gas in accordance with any applicable memorandum of understanding between the City and the utility company, or at the written request of a utility company.

(c) In addition to the permits required under this Chapter, property owners in the Takoma Park Historic District may also have to obtain a Historic Area Work Permit from the Historic Preservation Commission before removing or destroying a tree.

Sec. 12-304. Tree protection plan permit required.

(a) Except as provided in subsection (b), a tree protection plan permit is required for activity within the critical root zone of an urban forest tree that may destroy a significant portion of the roots of a tree or endanger the water supply to the roots. These activities may include excavation, depositing of a significant amount of fill dirt or other materials, construction of a structure, or paving of a significant area.

(b) No tree protection plan permit is required:

(1) Where a tree permit waiver is obtained under Section 12-305; or

(2) For action required on an emergency basis (with no time to apply for a tree

protection plan permit or a waiver) to prevent harm to life or property.

Sec. 12-305. Permit waivers.

(a) Upon receipt of an application for a tree permit waiver, the City Manager may issue a written determination (referred to as a tree permit waiver), waiving the requirement to obtain a tree permit for the removal of a tree if the City Manager determines that the tree is dead or that the tree is hazardous.

(b) Upon issuance of a tree permit waiver, the City Manager shall inform the applicant that the City encourages the planting of replacement trees on a voluntary basis.

(c) The property owner shall post notice of the waiver on the property beginning upon receipt of the waiver and continuing until the completion of the tree removal or the expiration of seven days, whichever shall first occur. The notice shall state that residents with comments or questions regarding the impact of the activity on the trees on or near the property may contact the City Manager and shall provide the City Manager's address and telephone number.

(d) The City Manager shall:

- (1) Make a copy of each waiver application available for public inspection; and
- (2) Provide an at-cost copy of a waiver application to any person requesting one.

Sec. 12-306. Permit applications.

(a) An owner may apply for a tree permit or tree protection plan permit covering action relating to an urban forest tree or trees on or near the owner's property. The application shall be made under procedures specified by the City Manager.

(b) In the case of an applicant who requests a tree permit or tree protection plan permit for the purpose of constructing on or developing property, the City Manager may require the applicant to submit copies of all permits, licenses, and approvals which are required for the construction or the development to take place before any action is taken on the application. This may include, but is not limited to, county building permit, builders' license, grading permit, sediment control permit, stormwater management permit, zoning variance, special exception, and site plan review.

(1) If all necessary permits, licenses, and approvals have not been granted as of the date the application is filed, then the City Manager, in his or her sole discretion, may accept other satisfactory evidence that all necessary permits and approvals for the construction or development will be granted and may begin acting on the application.

(2) An applicant for a tree permit or tree protection plan permit shall pay a processing fee of twenty-five dollars (\$25.00) to the City with the application.

(c) The City Manager shall:

(1) Make a copy of each application for a tree permit or tree protection plan permit available for public inspection; and

(2) Provide an at-cost copy of an application to any person requesting one.

Sec. 12-307. Permit approval.

(a) Tree permit approval subject to appeal.

(1) If the City Manager determines that the tree permit application is complete, that the criteria set forth in Section 12-311 (b) indicate that the applicant is entitled to a tree permit, and that the conditions for issuance of a tree permit have been met, then the City Manager shall notify the applicant that the City has granted preliminary approval of the application. The preliminary approval of the application does not authorize the applicant to take any action regarding an urban forest tree.

(2) Except as provided in subsection (b), within two working days of this notification, the Department shall post notice of the preliminary approval of the application on the property in question in plain view from the public right-of-way. A copy of the notice shall be posted on a bulletin board at the Municipal Building and on the City's web site for a concurrent period. The notice must describe the procedure and time limit for filing an appeal from the preliminary approval of the application. If no appeal is filed within 15 days after the notice has been posted, the City Manager shall issue a tree permit. If an appeal from the preliminary approval of an application is filed in accordance with Section 12-310, then no permit shall be issued until the appeal has been decided. The applicant is responsible for maintaining the notice for the entire posting period. The City Manager may extend the posting period up to an additional 15 days if he/she determines that the applicant failed to maintain the notice for the entire posting period.

(3) Conditions for the issuance of a tree permit may include, but are not limited to:

A. Compliance with the tree replacement requirements of Section 12-309;

B. Approval of a tree protection plan and/or inspection of the property by the City to verify that all required tree protection devices are in place;

C. Submission to the City of all necessary County and other permits, licenses, and approvals which are required for the construction or development of the property; and

D. Posting of a bond or other security for tree replacement.

(b) Tree permit approval not subject to appeal. Applicants receiving tree permits pursuant to paragraphs (1) and (2) below shall post notice of the issuance of the tree permit on the property beginning at least seven days before the tree removal and continuing until the completion of the removal.

The notice shall state that residents with comments or questions regarding the activity may contact the City Manager and shall provide the City Manager's address and telephone number.

(1) Where an owner proposes removing one or more urban forest trees of a species identified as an undesirable species by City regulation, the owner agrees to replace the tree or trees in accordance with Section 12-309, and the City Manager determines that the tree or trees are undesirable because of their location, condition, or effect on other trees, the City Manager shall issue a tree permit.

(2) Where an owner proposes removing one or more urban forest trees that the City Manager has determined to be diseased or infested beyond recovery, and the owner agrees to replace the tree or trees in accordance with Section 12-309, the City Manager shall issue a tree permit.

(c) Tree protection plan permit approval.

(1) If the City Manager determines that a tree protection plan permit application is complete, that the applicant has agreed to abide by a tree protection plan approved by the City Manager, and that all conditions for the issuance of a tree protection plan permit have been met, then the City Manager shall notify the applicant that the City has granted preliminary approval of the application. The preliminary approval of the application does not authorize the applicant to take any action regarding an urban forest tree.

(2) Within two working days of this notification, the Department shall send to the address of the owner(s) of record of all properties sharing a common property line with the property notice of the preliminary approval of the application. The notice must describe the procedure and time limit for filing an appeal from the preliminary approval of the application. If no appeal is filed within 15 days after the notice has been mailed, the City Manager shall issue a tree protection plan permit. If an appeal from the preliminary approval of an application is filed in accordance with Section 12-310, then no permit shall be issued until the appeal has been decided.

(3) *Tree protection plans.* The City Manager shall approve tree protection plans on a case by case basis. Tree protection plans may include, but shall not be limited to, the following elements:

- A. protection of roots from heavy equipment;
- B. prevention of soil compaction;
- C. prevention of silt runoff onto roots;
- D. prevention of grade changes;
- E. prevention of root damage by requiring proper root pruning or tunneling under roots;

- F. creation of a tree protection zone;
- G. fertilization and watering requirements; and
- H. protection of tree trunks.

The City Manager shall approve only such tree protection plans that prescribe all reasonable measures to protect any trees required to be preserved under this Chapter.

(4) Conditions for issuance of a tree protection permit may include, but are not limited to:

- A. inspection of the property by the City to verify that all required tree protection devices are in place;
- B. submission to the City of all necessary County and other permits, licenses, and approvals that are required for the construction and development of the property; and
- C. posting of a bond or other security for tree replacement.

Sec. 12-308. Application and permit validity time period.

(a) When tree replacement or tree replacement security is required by the City Manager pursuant to Section 12-309, permit applicants must post security or sign a tree replacement agreement approved by the City Manager within six months of submitting their application, or their application will be denied.

(b) Permits are valid for one (1) year from the date of issuance.

Sec. 12-309. Tree replacement required.

(a) Tree replacement as specified in this Section is required in the following cases:

(1) The applicant's agreement to replace removed urban forest trees shall be required as a condition of issuance of a permit to remove a tree under Section 12-303, and may be required as a condition of issuance of a permit for other actions under Section 12-304 that are likely to lead to destruction of a tree.

(2) Applicants are required to replace trees originally indicated and intended to be saved in a tree protection plan when such trees are excessively damaged or removed, including such trees that are on property adjacent to the applicant's property.

(3) Any person who removes or excessively damages a tree in violation of Section 12-303 is required to replace the tree within six months.

(b) Replacement trees shall be equal to or superior to the removed trees in terms of species quality, shade potential, and other characteristics. In the case of undesirable trees removed pursuant to Section 12-307(b)(1), the replacement tree shall be of superior species quality. Replacement trees shall be nursery stock trees with a minimum size of 1 ½ inches in caliper for deciduous trees, or 10 feet in height for evergreen trees and guaranteed for one (1) year.

(c) The basal area of the replacement trees, measured at caliper height, must be no less than a percentage of the total basal area of the tree to be removed, measured at 4 ½ feet above the ground. The percentage shall be determined using the following health quality analysis rating scale.

CRITERION	VALUE		RATING	
	5 or 4	3 or 2	1	
Trunk	Sound and solid	Sections of bark missing	Extensive bark loss and hollow	_____
Growth/Rate per year	More than 6 inch twig elongation	2 to 6 inch twig elongation	Less than 2 inch twig elongation	_____
Structure	Sound	1 major or several minor limbs dead	2 or more major limbs dead	_____
Insects/Diseases	Normal pest presence	Moderate affliction or infestation	Severe affliction or infestation	_____
Crown/Development	Full and balanced	Full but unbalanced	Unbalanced and lacking a full crown	_____
Life Expectancy	Over 30 years	5 to 30 years	Less than 5 years	_____
Total Rating				_____

(d) Using the above scale, trees are to be replaced according to the following formula, with the actual number of replacement trees required rounded up to the next whole number:

Total Rating of Tree to be Removed	Percentage of Basal Area to be Replaced	
	Undesirable Species Removed per §12-307(b)(1)	All other Trees
6 to 15	.5%	1%
16 to 24	1%	2%
25 to 30	1.5%	3%

(1) For trees removed or excessively damaged in violation of this Chapter or an approved tree protection plan, the total basal area of the replacement tree at caliper height must be no less than 10% of the basal area at 4 ½ feet above the ground of the tree removed or damaged.

(2) In the case of an applicant's removing trees for the purpose of developing property, the replacement trees must be adequate to insure that the extent of tree cover at the time of development will be achieved by newly planted trees on or off site within 25 years.

(e) Where it is not feasible or desirable to replace trees on site, the replacement requirement may be satisfied by planting trees at another location approved by the City Manager within the City or by a contribution equivalent to the installed market value of the required replacement trees to the City's tree planting fund.

(f) As a condition precedent to the issuance of a tree permit or approval of a tree protection plan, the City may require the applicant to post a bond, letter of credit, or other security acceptable to the City or to deposit a sum of money with the City (hereafter referred to as "security"). The amount of the security required to be posted or deposited with the City shall be equal to the tree replacement costs of trees for which a tree removal permit has been issued and the cost of removing and replacing any tree or trees covered by a tree protection plan which die or become hazardous, including such trees that are on properties adjacent to the applicant's property.

(1) The security may be retained by the City until the later of the date that the tree replacement requirements of this Section are satisfied or, in the case of construction or development activities, until two years following the completion of the construction or development on the property as evidenced by final inspection approval by the County or other applicable governmental agency or entity.

(2) The security may be forfeited to the City, in whole or in part, if the tree replacement requirements are not timely met or if any tree or trees on the property or adjacent properties die, become hazardous, are excessively damaged, or are removed in violation of the terms of a tree permit or an approved tree protection plan for the property.

(3) There is a presumption that the death , hazardous condition, or significant decline in the health of any tree on the property which is covered by a tree protection plan, within two years following the completion of the construction or development, was caused by the construction or development activity. The burden of rebutting this presumption, by a preponderance of the evidence, is on the applicant.

(4) The amount of the security which is forfeited to the City shall be equal to the tree replacement costs of the tree or trees on the property or adjacent properties which die, become hazardous, are excessively damaged, or are removed in violation of the terms of a tree permit or an approved tree protection plan for the property. In the case of construction or development activities on property, the amount of the security which is forfeited to the City also may include the cost of removing any tree or trees covered by a tree protection plan that die or become hazardous. The forfeited security shall be added to the City's tree planting fund or, with the agreement of the property owner and the City, may be used to remove or replace the dead, damaged or hazardous tree or trees on the property.

Sec. 12-310. Appeals from permit decisions.

(a) The permit applicant or any resident of the City or owner of property in the City may appeal the preliminary approval of an application for a tree permit within the 15-day notice period. The permit applicant or the owner of a property with a common property line may appeal the preliminary approval of an application for a tree protection plan permit within the 15-day notice period. If a notice of appeal is filed during such 15-day posting period, then no permit shall be issued until the Tree Commission has conducted a fact-finding hearing and has issued its final decision on the appeal.

(b) A notice of appeal from the preliminary approval of an application for a tree protection plan permit must allege with particularity facts upon which the Tree Commission could determine that the tree protection plan is insufficient to protect the trees to be protected under the plan.

(c) The permit applicant also may appeal the denial of a permit within 15 days after the date that the City Manager notifies the applicant of the denial of a permit for the removal or destruction of a tree covered by this Article.

(d) There is a rebuttable presumption that the decision of the City Manager with respect to a permit application is correct. Any decision by the Tree Commission to impose conditions upon an applicant or reverse or modify a decision of the City Manager with respect to a permit application must be based upon substantial evidence in the record. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

(e) There shall be no appeal from the tree replacement requirement or from the granting or denial of a tree permit waiver by the City Manager.

(f) A notice of appeal shall be in writing, state the reasons for the appeal, and the nature of the interest of the person filing the appeal. Appeal notices shall be filed with the City Manager, who shall forward the notice to the Tree Commission.

(g) An appeal shall be dismissed if the party filing the appeal, or his or her representative, fails to appear for the hearing.

(h) The Tree Commission shall conduct a fact-finding hearing on an appeal from a permit decision or issuance of a stop work order after giving reasonable notice of the hearing to all interested parties in accordance with the Tree Commission's rules. At the hearing, any interested party may present testimony and evidence to substantiate any material point. All testimony shall be given under oath or by affirmation. The burden of proof shall be on the party filing the appeal and shall be met by a preponderance of the evidence. The parties may also cross-examine opposing witnesses presenting testimony at the hearing. A verbatim record of the hearing shall be made. The record shall be open to inspection by any person and, upon request, the Tree Commission shall furnish such person with an at-cost copy of the hearing record.

(i) (1) The Tree Commission may view a property that is the subject of an appeal. All parties to the appeal have the right to be present during the viewing.

(2) At the hearing, the Commission must notify the parties of the Commission's intent to view the property and the parties' right to be present at the viewing. Any party may waive their right to be present during the viewing. Parties that fail to appear at the hearing are deemed to have waived their right to be present at the viewing. The Commission and the parties that have not waived their right to be present shall schedule the viewing of the property to occur no later than ten days after the hearing.

(3) All Tree Commissioners participating in the decision of the appeal must be present for the viewing.

(4) The parties shall not communicate with the Commissioners regarding the subject matter of the appeal during the viewing.

(5) The Tree Commission must file a written report in the record of the proceeding stating the facts observed during the viewing upon which its decision and order is based.

(j) On appeal from the preliminary decision on a tree permit application, after due consideration of the evidence and testimony and the criteria for permit decisions set forth in Section 12-311, the Tree Commission shall issue its decision on the appeal and shall give notice to all interested parties.

(k) On appeal from a preliminary decision on a tree protection plan permit application, after due consideration of the evidence and testimony and application of the standard for approval of tree protection plans set forth in Section 12-307(c)(3), the Tree Commission shall issue a decision on the appeal affirming or modifying the decision and shall give notice to all interested parties.

(l) Within 30 days of the date of the issuance of a decision of the Tree Commission, a person who was a party to the proceedings before the Tree Commission and who is aggrieved by the decision may seek judicial review of the decision by filing a petition for judicial review in accordance with Title

7, Chapter 200, Judicial Review of Administrative Agency Decisions, of the Maryland Rules of Procedure, or any subsequent amendments thereto.

Sec. 12-311. Criteria for tree permit decisions.

(a) The City Manager or, upon appeal, the Tree Commission shall issue a tree permit pursuant to Section 12-307(a) if so indicated by the factors set forth in subsection (b). Upon appeal, the Tree Commission shall, taking into account the factors set forth in subsection (b), approve the permit, disapprove the permit, or approve the permit with modifications and/or conditions.

(b) The following factors shall be taken into account:

(1) The extent to which tree clearing is necessary to achieve proposed development or land use, and, when appropriate, the potential ameliorating effects of any tree protection plan that has been submitted or approved.

(2) The number and type of replacement trees and, if appropriate, any reforestation plan proposed as mitigation for the tree or trees to be removed.

(3) Any hardship which the applicant will suffer from a modification or rejection of the permit application.

(4) The desirability of preserving any tree by reason of its age, size, or outstanding quality.

(5) The extent to which the area would be subject to environmental degradation due to removal of the tree or trees.

(6) The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or trees are located.

(7) The general health and condition of the tree or trees.

(8) The desirability of the tree species as a permanent part of the City's urban forest.

(9) The placement of the tree or trees in relation to utilities, structures and the use of the property.

Sec. 12-312. Violations and penalties; enforcement.

(a) Municipal infractions.

(1) Any of the following shall be a Class AA municipal infraction:

A. Doing any of the acts for which a permit is required under Section 12-303 or 12-304 without applying for a permit, after an application for a permit has been denied, or after applying for a permit but before a permit has been issued, unless a permit waiver covering the act has been issued or the act is described in Section 12-303(b) or 12-304 b).

B. Failure to fulfill the requirements of Section 12-309.

C. Any violation of a decision or order of the Tree Commission, including but not limited to the violation or nonperformance of conditions imposed in connection with the issuance of a permit.

(b) Misdemeanors.

(1) It shall be a Class A misdemeanor to do any of the following:

A. To do any of the acts specified in subsection (a) in relation to 3 or more urban forest trees, whether or not such urban forest trees are located on the same property, within a 3-month period.

B. To do any of the acts specified in subsection (a) in relation to any urban forest tree which has been designated by the Tree Commission or the City as having special botanical, ecological or historical significance or as a landmark.

C. To do any of the acts specified in subsection (a) in relation to any tree, which is more than 33 inches in circumference at 4 ½ feet above ground level.

D. To willfully or repeatedly violate this Chapter or an order of the Tree Commission.

E. To violate a stop work order issued pursuant to Section 12-104 (c).

(c) Each urban forest tree that is damaged or destroyed as a result of act(s) taken in violation of any provision of this Chapter is considered a separate violation of the appropriate Section(s).

(d) In cases where a person has hired an individual or organization to perform tree work that is in violation of any provision of this Chapter, both the hired and the hirer may be subject to the penalties set forth in this Chapter.

(e) Any person or organization that performs tree trimming or tree removal for hire within the City of Takoma Park and who violates any provision of this Chapter may be barred from contracting with or performing work for the City of Takoma Park.

Sec. 12-313. Duties of City Arborist.

The City Arborist shall prepare an annual report to the Council that shall include a description of the condition of the urban forest , the number of applications received and tree permits, tree protection plan permits, and waivers issued by the City Manager, and a summary of each decision of the Tree Commission; prepare and update, at least biennially, a master tree plan consisting of an inventory of trees on public space and a multi-year planting schedule; notify the Council of significant events related to the urban forest; recommend, as needed, changes in law or other action the Council may wish to take to protect and promote the urban forest in Takoma Park; prepare a quarterly report to the Council listing the number of applications received and the number of tree permits, tree protection plan permits, and waivers issued by the City Manager; and perform any other related duties assigned by the City Manager or by ordinance or resolution.

Adopted this 10th day of November 2003, by roll-call vote as follows:

Aye: Porter, Austin-Lane, Dawes, Elrich, Stewart, Williams

Nay:

Absent: Maack

Abstain:

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